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Historical Societies and Legal History

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We often hear, especially during this bicentennial era, that more than half of the Founding Fathers were lawyers. What is much less often noted, however, is that most of them were historians. Knowing the great stakes for which they were playing, these men banked the nation's future on what they had learned from the past.

Interesting as it is, this is hardly a startling fact for us. What is significant, from the historical agency administrator's point of view, are the steps that these men took to preserve the story of the historical events in which they took part, particularly within their own states.

I. HISTORICAL SOCIETIES IN GENERAL

Two years after the passage of the Judiciary Act of 1789, the first state historical society was established in Massachusetts. During the next few decades there followed, in quick succession, the creation of other historical societies. The founders of some of these societies were people who were also among the nation's founders. They were present to record the first person narratives of the participants in the great events of the day and to organize permanent institutions that would preserve and continue to collect the history of their states.

Historical societies tracked the movement of Americans westward, documenting the birth and growth of each new state. Soon after the incorporation of state societies, counties too, saw the benefit of preserving their origins, and local historical societies leaped up across each state. During periods of intense interest in, and appreciation for, the nation's history—including the early twentieth century, the mid-1970s, and the late 1980s—there has been a dramatic rise in the number and variety of historical organizations. Today, there are more than nine thousand historical agencies in the United States, ranging in size from large national institutions to small local societies.

Although their collections contain much of the evidence chroni-

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cling the nation's history, historical agencies have long been regarded as amateur organizations, in contrast to the professional realm of academe. Usually staffed by volunteers with little or no professional training, historical societies have been characterized as being beyond the pale of respectable historical endeavor. However, a little more than a decade ago, the concept and the importance of public history—history practiced outside of the traditional field of college departments—was suddenly grasped by faculty advisors.

The reasons for this sudden appreciation of history practiced outside the classroom are many. Certainly, the lack of jobs in the classroom and the expanding opportunities outside contributed. In addition, there was the recognition that the work of handling important documents and records, fragile artifacts, and the histories of private companies and public agencies warranted well-trained scholars and technicians. Programs for training public historians—professionals who work in corporations, government bureaus, cultural resource offices, media production firms, and historical agencies—began to crop up in universities nationwide. Historians who worked outside of the groves of academe began to gain respectability. French historian Henry Rousso, currently visiting at Harvard, observed:

I've looked at Harvard for evidence of a new American school of history and found most people reworking the Annales approach.

It may well be that public history, which is prospering elsewhere, is after all a bona fide new American school of history.¹

The diversity of historical societies is astounding. The directory of the American Association for State and Local History lists hundreds of subjects preserved and promulgated by these agencies. Yet, despite their widely differing interests, most historical societies share a common *modus operandi*.

The foremost function of historical societies has been the collection and preservation of historical materials—manuscripts and printed works, artifacts, oral histories, paintings, and photographs. In doing this, curators and conservators, archivists and librarians have worked, to create their own professional niches and to establish their own bodies of theory and practice.

Publishing has always been a major component of most historical agencies. The earliest societies issued proceedings and transactions, which included first person narratives, interviews, and articles. These early, and usually irregularly issued, publications evolved into the journals that most larger societies now produce.

1. Meeting of the National Council on Public History, Washington, D.C., April 24, 1987.

Today, historical societies are among the most prolific publishers of historical books and monographs in the country.

Three years before the Constitutional Convention Charles Wilson Peale's museum opened in Philadelphia. Since then exhibits have played an increasingly more prominent role in the narration and interpretation of American history. Exhibits may be permanent or temporary, stationary or traveling. They may simply describe and illustrate an event, an era, or a lifestyle or they may interpret events and, in rare cases, express a particular viewpoint.

Historical societies also serve an educational role. In addition to the uses to which their collections and publications are put in preparing scholars, historical agencies inform and educate the general public, through their exhibits and other public programs such as lectures, symposia, seminars and the like. All of the familiar state and county societies provide opportunities for school classes to visit museums and historic sites, while some also offer in-school programs.

II. LEGAL HISTORICAL SOCIETIES

The 1976 Bicentennial was the genesis for thousands of historical groups nationwide. From this celebration we can trace the origin and development of two leading legal historical societies—the Supreme Court Historical Society and the United States District Court for the Northern District of California Historical Society. Additionally, the publication of the histories of several of the federal circuits was prompted by the Bicentennial celebration.

Inspired by these efforts, and by the approaching bicentennial of the Constitution, nearly a score of courts and judicial regions—the state supreme courts and federal districts and circuits—have organized their own historical societies during the past five years.

The following is a review of the approaches that the courts and bars are taking through their historical societies to develop the regional legal history of the United States. This Article will review the range of programs being developed and offered by these groups, provide examples and illustrations of them, and describe how these programs are being carried out within the Ninth Circuit, and especially by the Ninth Judicial Circuit Historical Society and by the Northern District's historical society.

A. Essay Contests—The Historical Society of the United States District Court for the District of New Jersey's major program this year is an essay contest soliciting essays on the history of the federal trial courts in the District of New Jersey. This contest provides students with an opportunity to become active in New

Jersey's Constitutional commemoration and to win a \$2,500 award. Essay competitions have long served a bridge between schools and historical societies.

B. Meetings—As non-profit corporations, legal historical societies are obliged to hold occasional meetings of their boards and members. Most use these as opportunities to provide programs for their members and the public. Societies also sponsor symposia, such as the Historical Society of the United States District Court for the Eastern District of Pennsylvania's 1986 symposium on legal history. This past year, the Northern District's society presented a four part series on the Constitution. It also has presented two, well-attended, "Then and Now" programs in which panels of eminent, veteran practitioners discussed changes in the legal world.

C. Oral History Programs—Nearly every legal historical society has established an oral history program. This is an effort to interview the members of the courts and eminent members of the bar. The Eleventh Circuit Historical Society and the Eastern Pennsylvania society are videotaping all of their senior judges, and are commissioning professional oral historians to do the interviews. The Ninth Judicial Circuit Historical Society is taking another approach: it is soliciting volunteer interviews from throughout the circuit to gather oral histories. For judges, the Society is recruiting former law clerks or former partners; for lawyers, it is working with their partners and associates. In two cases, judges dictated their own oral histories. The Society has developed a packet for interviewers, which includes long lists of questions as well as an overview of the process and technique of oral history. The Society's purpose here is to involve in its oral history program lawyers and judges who are interested in working in a historical program rather than to rely upon the work of an oral historian, which the society cannot presently afford.

D. Exhibits—Several historical societies have produced substantial exhibits illuminating the history of law and the courts. In 1986, the Oregon Historical Society presented an international exhibition titled *Magna Carta: Liberty Under the Law*, which included one of the four extant original copies of the Magna Carta and followed the development of the Common Law from the thirteenth through the eighteenth centuries. In New York City, the Appellate Division of the First Judicial Department has produced three exhibits, the most recent being *Law and the Theater: New York City, 1880-1912*. The Second Circuit's Historical Committee, in conjunction with the Northern District of California society, has produced an exhibit titled *The Fields and the Law*, on Justice Stephen J. Field, David Dudley Field, and other members

of the Field family, and it has traveled from New York to San Francisco and Los Angeles. The Ninth Judicial Circuit Historical Society recently produced *The Constitution and the Courts*, a display describing and illustrating the founding of the federal courts and the early years of the Ninth Circuit. Even county historical societies offer legal history exhibits: the Chester (Pennsylvania) County Historical Society this September opened *Writs, Petitions, and Indictments: Documents of the Courts of Chester County*.

E. Publications—Of all the types of programs offered by legal historical societies, the greatest investment in time, funds, and personnel goes into publication. A quick review of the variety of these publications will illustrate the range of interests and character of the various organizations.

1. *Newsletters*—Nearly every historical society, legal and otherwise, publishes a newsletter. These house organs provide information to members and the larger public about the society's activities while, as mentioned earlier, also publishing short articles about court personnel, personalities in the bar, historic court-houses, and other substantive matters of general interest.

2. *Calendars*—The Historical Society for the United States District Court for the Eastern District of Pennsylvania publishes a calendar every year. For 1987, the theme of the monthly illustrations is "those who labored in 1787 through the heat of a Philadelphia summer to secure for themselves and their descendants the blessings of liberty." Nearly every day is a note of historical importance in the Constitution's founding and later history.

3. *Yearbooks*—Since 1976, the Supreme Court Historical Society has produced an annual illustrated yearbook, a collection of articles with such titles as *The Case of the Missing Bodies*, *The Circuit Riding Justices* and *Court Nominations and Presidential Cronyism*. The Yearbook is sent to Society members and libraries.

4. *Books*—In addition to the Supreme Court Historical Society, other legal historical societies publish books. The Second Circuit's Historical Committee has been particularly active. Its just-released *Egbert Benson: First Judge of the Second Circuit (1801-1802)* is the Committee's third publication. The Ninth Judicial Circuit Historical Society and the United States District Court for the Northern District of California Historical Society recently copublished *Authorized By No Law*, a book on the 1856 Committee of Vigilance and the Circuit Court for the Districts of California. Although not part of any historical society's effort, the Third, Fifth, Sixth, Seventh and Eighth circuits published their histories produced under the auspices of the bicentennial Committee of the Judicial Conference of the United States, as have the United States District Court for the District of Columbia and the United

States Court of Claims.

5. *Journals*—There are two legal history journals now being published in the United States. *Law and History Review* has been published by the American Society for Legal History and the Cornell Law School since 1982. Since Fall 1987, however, its publication offices have been located at the University of Illinois College of Law. *The American Journal of Legal History* has been published since 1957 by Temple University School of Law. These two journals publish scholarly articles covering a broad range of legal history, from ancient to modern, and are international in scope.

The Ninth Judicial Circuit History Society has begun publishing a new illustrated journal called *Western Legal History*. This journal will explore and analyze the role of law in the history of the American West. With the help of an editorial board, the Society is soliciting articles that will interest a diverse readership, including scholars, judges, attorneys, historians, and members of the public. It will be a semi-annual publication until enough funds and manuscripts allow for quarterly publication.

F. *Collections*—The principal assets of most historical societies are collections including: artifacts, photographs, manuscripts, tape recordings, and published books. To date, most legal historical societies in the country have chosen to keep their collecting activities to a minimum, preferring to focus on publishing, exhibits programs, and oral histories which do not result in substantial physical holdings. In the case of court historical societies, much of what might be considered their collections—court and case records—is maintained by the clerks of the courts. The United States District Court for the Northern District of California has a full-time archivist to manage that court's collections, one of the few such positions in the nation.

III. THE NINTH JUDICIAL CIRCUIT HISTORICAL SOCIETY

The Ninth Judicial Circuit Historical Society, as with most legal historical societies, has chosen to encourage prospective donors of materials to place their papers with established historical repositories. Such repositories have the staff and facilities for maintaining historical records and objects, and for making them accessible to researchers. At this time, no legal historical society is so equipped or adequately funded to provide such service.

In partnership with state historical societies and state archives, the Ninth Judicial Circuit Historical Society is developing an inventory of archival materials: manuscripts, personal collections, court records, and law firm records that are accessible to the public. The goal of this long-term and ambitious project is to provide

researchers with a cumulative, comprehensive, and coherent guide to law and court-related matter held by regional historical repositories. Accompanying this effort is the hope that other State and Circuit historical societies will follow suit thus creating many comprehensive guides to legal historical matter.

